IN THE

Supreme Court of the United States

October Term, 1943.

No. 436

L. METCALFE WALLING, Administrator of the Wage and Hour Division, United States Department of Labor,

Petitioner,

versus

JAMES V. REUTER, INC.,

Respondent.

REPLY BRIEF ON MOTION TO RECALL WRIT OF CERTIORARI.

FRANK S. NORMANN,
1605 Hibernia Bank Bldg.,
New Orleans, La.,
Attorney for Mover.

NORMANN & ROUCHELL and
CARLOS E. LAZARUS,
1605 Hibernia Bank Bldg.,
New Orleans, La.

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The response by the petitioner to the motion to recall the writ of certiorari was received too late to formally reply thereto prior to action taken by this Court on February 28th.

I.

The response of the petitioner endeavors to create the impression that a dissolved corporation still exists for certain purposes under the law of Louisiana. The Reuter

Company was a private corporation which was organized and existed by virtue of Louisiana's Business Corporation Act, No. 250 of 1928, as amended. Whether its dissolution put an end to its existence, like that of the death of a natural person, or its life prolonged for the purposes of litigation, must be determined from the statute creating it. The redactors of the statute under discussion made no provision whatsoever for the prolongation of the life of a corporation, even for the purposes of litigation, subsequent to its liquidation and evidence of its dissolution by the issuance of a certificate to that effect by the Secretary of State of the State of Louisiana.

In the certificate of the Assistant Secretary of State, a photostatic copy of which has been filed with this court, the essential requirements of the Louisiana Statute as to proof of publication of notice of dissolution and the certificate of the liquidator showing that the affairs of the corporation had been completely wound up and dissolved, is acknowledged as being in compliance with the statute justifying the issuance of the certificate of dissolution,— **"and the corporation stands dissolved".**

The response of the petitioner would have this court to ignore its oft repeated decisions **to the effect that a private corporation can exist only under the express law of the state or sovereignty by which it was created, and its dissolution puts an end to its existence, the result of which may be likened to the death of a natural person, and there must be some statutory authority for the prolongation of its life even for litigation purposes.** The most recent case of this court sustaining this doctrine is

Chicago Title & Trust Co. v. Forty-one Thirty-six Wilcox Bldg. Corporation, 302 U. S. 120, 58 S. Ct. 125, 82 L. Ed. 147. Cf. *Oklahoma Gas Co. v. Oklahoma*, 273 U. S. 257, 47 S. Ct. 391, 71 L. Ed. 634; *First National Bank v. Colby*, 21 Wall. 609, 615, 22 L. Ed. 687; *Oregon Railway Co. v. Oregonian Ry. Co.*, 130 U. S. 1; 20, 9 S. Ct. 409, 32 L. Ed. 837. The error into which the respondent to the motion to recall has fallen, is the failure to distinguish the status of a Louisiana corporation while in the process of liquidation and one that has been dissolved. This is so patent from the brief filed in opposition to the motion to recall, that we quote therefrom. On page '5' of the brief, we find the statement:

> "Under the Louisiana corporation law respondent no longer exists, even for purposes of suit."

That is exactly the contention of the mover to recall and the writer doubts if he could have stated the subject more clearly. On the following page, No. 6, it is contended, should the judgment of the Circuit Court of Appeals be reversed, it "would bind Reuter individually, while he is carrying on the business, * * *." Throughout the brief, it is contended that Reuter is carrying on the business of the dissolved corporation in a capacity likened to that of a liquidator. That such is not the case is not only supported by the affidavit of Mr. Reuter, but is also evidenced by the certificate of the Assistant Secretary of State, who certifies to the world that the former corporation has complied with the law of Louisiana relative to the dissolution of corporations **and that the corporation stands dissolved.**

II.

But counsel contends that the certificate of dissolution in the present case was improperly issued by virtue of the interpretation of the Louisiana Business Corporation Act by the Supreme Court of Louisiana in the case of *McCoy v. State Line Oil and Gas Co.*, 180 La. 579, 585, 157 So. 116, 118, and that it was incumbent upon the liquidator of the Reuter corporation to defend the litigation presently before this court. That such was not the holding of the Supreme Court of Louisiana can be gleaned from a mere reading thereof. The cited case is authority for the doctrine **that a certificate of dissolution issued by the Secretary of State, pursuant to the provisions of Section 62 of Act 250 of 1928, terminates the legal existence of the affected corporation and the tenure of office of its liquidator, and no litigation can thereafter be conducted against that corporation, or its representative, unless the certificate is annulled.** As held by the court:

> (P. 583): "The suit was met by a plea in abatement or in bar, resting on the ground that defendant—a corporation—had been dissolved and had ceased to exist. In a supplemental petition, plaintiff prayed that the certificate of dissolution, issued by the Secretary of State, under section 62 of Act No. 250 of 1928, be canceled and annulled. **It is the plea in bar and the demand for the cancellation of the certificate of the Secretary of State that the court has presently before it.**
>
> **"Unless the certificate of the Secretary of State is annulled, the litigation against the corporation is ended, for the effect of the certificate is to destroy**

the corporation by putting it completely out of existence. In other words, unless the certificate be annulled, the corporation would remain dead."

To the same effect is the holding by the Court of Appeal of the State of Louisiana, Second Circuit, in the case of *Ortego, et al. v. Nehi Bottling Works, et al.*, 182 So. 365, 367.

It has been the law of the State of Louisiana, since the decision in the case of *Musson v. Richardson*, 11 Rob. 37, decided in 1845, that the dissolution of a corporation ends its legal existence, and no valid judgment can thereafter be rendered against it. Cf. *Putman & Norman, Inc. v. Levee*, 160 So. 155.

In the case of *Pelican Oil & Gasoline Co., Inc., et al., v. Commissioner of Internal Revenue*, 128 F. (2d) 561, an attempt was made by a dissolved corporation for a redetermination of its tax liability before the Board of Tax Appeals. On the ground that the company had been previously dissolved, the petition was dismissed. Reviewing the conditions under which a corporation may be dissolved under the laws of the State of Louisiana, and although the court comments upon the fact that the corporation was dissolved the same day that the liquidator was appointed, it was held:

> (P. 562): "On the narrow question presented, we are constrained to hold that this liquidator, under the law of his appointment, can no longer litigate for the corporation which he wound up and dissolved."

As the writer understands the Business Corporation Law of this State, there is no extension of the liquidator's functions subsequent to the dissolution of a corporation, except as provided in Section 62, paragraph 111, wherein it is provided that any assets omitted from the winding up shall vest in the liquidator or liquidators for the benefit of those who would have been entitled thereto if they had been in their hands prior to the dissolution.

III.

In the case of *Chicago T. & T. Co. v. Forty-One Thirty-Six W. Bldg. Corp., supra,* this court held:

> "How long and upon what terms a state-created corporation may continue to exist is a matter exclusively of state power. Horn Silver Mining Co. v. New York, 143 U. S. 305, 312, 313, 12 S. Ct. 403, 36 L. Ed. 164; Ashley v. Ryan, 153 U. S. 436, 441, 443, 14 S. Ct. 865, 38 L. Ed. 773; New Jersey v. Anderson, 203 U. S. 483, 493, 27 S. Ct. 137, 51 L. Ed. 284. The circumstances under which the power shall be exercised and the extent to which it shall be carried are matters of state policy, to be decided by the state legislature. There is nothing in the Federal Constitution which operates to restrain a state from terminating absolutely and unconditionally the existence of a state-created corporation, if that be authorized by the statute under which the corporation has been organized. And it hardly will be claimed that the federal government may breathe life into a corporate entity thus put to death by the state in the lawful exercise of its sovereign authority."

And in the cited case this court held that the federal government is powerless to resurrect a corporation which the state has put out of existence for all purposes.

Concluding this part of the argument, it is submitted that the action of the state in issuing its certificate of dissolution, has terminated the corporation's life for all purposes, and that under the law of the State of Louisiana, the creator of this corporation and by virtue of whose laws it was dissolved, no valid judgment may be rendered against it in these proceedings and the motion to recall the writ should be granted.

A review of the brief filed by the petitioner in response to the motion to recall, reflects that the authorities advanced in support of the petitioner's contention, are not in point on the question before this court. Counsel cite the case of *Interstate Circuit v. United States*, 306 U. S. 208, 225, 226 (page 8) in connection with the refusal of counsel for the former Reuter Corporation to impart certain information.

The writer's reply thereto is that under the facts disclosed in the motion to recall, the information sought was irrelevant to a decision of the issues presented by the motion to recall. Until such time as the certificate of dissolution is annulled, the litigation against the corporation is ended, and the shareholdings of the respective stockholders is irrelevant.

Most, if not practically all of the cases relied upon by the petitioner, concern themselves with patent infringe-

ment litigation. It will not be the writer's purpose to review them all, but a cursory examination thereof will show they are inapplicable. In *Harvey v. Bettis, et al.*, 35 F. (2d) 349, (page 8 of brief) "Appellant was not a party to the suit, and the injunction ran against him only so long as he was connected with one of the defendants or was acting in aid to or in collusion with one or more of them or for their benefit." *Parker v. United States*, 126 F. (2d) 370, 379, is not in point.

The case of *Bernard v. Frank*, 179 Fed. 516, is so foreign to the issues before the court that we quote from the body of the decision:

> (P. 517): "That it was organized for the purpose of escaping the consequences of the infringement of the patent which Bernard had sold and assigned to the complainants, is too plain for controversy."

In the affidavit of Mr. Alexander E. Ralston, Jr., an associate attorney in the office of Solicitor, United States Department of Labor, annexed to the petitioner's response to the motion to recall, it is stated that he had been informed by Mr. Reuter's counsel that the dissolution of the corporation was had to avoid corporate taxes.

Irrespective of the relevancy of the motive on the part of the shareholders to dissolve the corporation, it cannot be likened to a corporation organized by a defendant who has been enjoined from infringement of a patent, for the sole purpose of escaping the consequences of the injunction, and of which such defendant is an officer. The other authorities cited by petitioner, involving patent cases, are equally inapplicable.

The authorities cited on page 10 of petitioner's brief, of which *Cantrell & Cochrane, Ltd. v. Witteman*, 180 Fed. 794, is characteristic, involve contempt proceedings for violating an injunction in patent infringement cases, and the writer is at a loss to understand their application to the factual issues in this case.

Until such time as this court reverses the Circuit Court of Appeal and reinstates the injunction, assuming the court will not recall its writ and reinstate the injunction, there is no injunction in effect to violate, and therefore the petitioner's authorities are not pertinent.

On page 11 of petitioner's brief the case of *Southport Petroleum Co. v. National Labor Relations Board*, 315 U. S. 100, 62 S. Ct. 452, 86 L. Ed. 718, is unlike the case presently under discussion, because in the cited case the order of the Board not only ran to the petitioner, **"but also to its 'officers, agents, successors, and assigns.'"** Even if the court reinstated the original injunction granted in this case, no such language will be found therein.

In the case of *Iowa Barb Steel Wire Co. v. Southern Barb-Wire Co.*, 30 Fed. 123, the managing officers were made parties defendant to the bill as joint wrong-doers with the corporation.

We are humbly at a loss to understand in what respect a suit by the government under the Sherman Law to dissolve a private association formed by certain railroad companies for their mutual protection by establishing and maintaining reasonable rates, rules and regulations on

certain freight traffic, for which the case of *United States v. Trans-Missouri Freight Ass'n*, 166 U. S. 290, 17 S. Ct. 540, 41 L. Ed. 1007, is cited on page 13 of petitioner's brief, has any bearing or relation to the status of a dissolved corporation under a particular state law.

IV.

On page 14 of petitioner's brief, the statement is made that a decision on the merits will not be a nullity, since it will in practical effect at least determine the rights of respondent's employees to recover for past violations under Section 16 (b) of the Act. The petitioner then cites the cases of *Ortego v. Nehi Bottling Works*, 182 So. 365, and *Stock v. E. A. Fabacher, Inc.*, 185 So. 48, both cases originating and decided by the Courts of Appeal for the State of Louisiana. In footnote '6' on page 14, the petitioner contradicts the fear which he entertains in his brief and completely refutes his own argument that a decision in this case is necessary to protect the employees in their alleged claims, because he makes the statement:

> (Footnote 6): "The employee's right to recovery for unpaid wages due under the Act remains in existence against the stockholders of the dissolved corporation."

Nowhere in the affidavit furnished by the petitioner nor in the record before the court is there any evidence or statement of any pending or contemplated employees' claims. The writer of this brief makes the statement, to the knowledge of the atttorneys for the Wage and Hour Division, every employee suit brought against the dis-

solved corporation was either dismissed for lack of proof, prescription or prosecution, without the dissolved corporation being cast for a money judgment in any one of said suits. That the delays for appeal have expired in all cases and that there are no pending or contemplated employee claims.

On pages 15 and 16 of petitioner's brief, cases decided by this court as well as the La. Supreme Court in proceedings involving money judgments in tort and other actions are cited as authority that the death of a natural person does not abate appellate proceedings after a judgment for the plaintiff. The writer of this brief has no quarrel with the cited cases, except they are inapplicable to the case at bar, since there is no money judgment involved in this case.

In an abundance of precaution, we ask the court not to accept the quotation found on page 16 of petitioner's brief as emanating from the case of *Pendleton v. Russell*, 144 U. S. 640, 12 S. Ct. 743, 36 L. Ed. 574, as sustaining the petitioner's contention that the dissolution had not abated the previous appellate proceedings. In fact, this case is authority against the very principle for which it is urged. As the writer understands the case, the judgment purported to be against a dissolved insurance company that had no legal existence at the time. Said the court:

> (12 S. Ct. p. 745): "The judgment was therefore no more valid against a nonexisting corporation than it would have been if rendered for a like amount against a dead man. The receiver was not substituted in the place of the dissolved corporation. No process

or citation was issued by that court to bring him before it, or any proceeding taken for that purpose. *Nor would such a proceeding have any effect, for, the corporation having expired, the suit itself had abated.* It ceased to be a pending suit, etc." (Writer's Italics.)

Likewise, the petitioner quotes the case of *May v. State Bank*, 2 Rob. (Va.) 56, but from which case we quote the following as contradictory to the contention for which it is urged to the court by the petitioner:

(P. 68): "On the other hand an abatement de facto, for matters of abatement after the commencement of the suit, rests on a somewhat different principle. I need only notice the case of the death of the plaintiff or defendant after action brought. In such case the action, though well brought, cannot properly proceed when one of the parties has become extinct. The objection may come from either side, *at any state of the cause*, and need not be pleaded in any shape or form. It is equally incumbent on both sides to give information of the fact to the court. And it is at their peril that those who conduct the demand or the defense take judgment for or against the dead party. To give effect, however, to the abatement it must be declared by the act of the court; for though in the language of the books, the cause is abated de facto, yet the abatement must be judicially pronounced. But whether so pronounced or not, it is equally error to render judgment for or against a dead man. If the death appears upon the face of the record, it is error of law; if it does not so appear, it is error of fact; and in either case the judgment may be reversed by writ of error; in the former, by a writ of error in an appellate court; in the latter by a writ of error coram vobis in the same court.

"Such is the uniform rule of the common law in abatements de facto by the death of a party pending the actions, at any time before final judgment. It applies to all cases whether before or after a decision upon the merits, whether the cause of action does or does not survive to the representative of the deceased party, and whether the death be that of a sole plaintiff or defendant, or one of several joint plaintiffs or defendants." (Writer's Italics.)

CONCLUSION.

In conclusion, it is submitted that the motion to recall the writ of certiorari should, for the reasons herein stated, be granted.

All of which is,

Respectfully submitted,

FRANK S. NORMANN,
1605 Hibernia Bank Bldg.,
Attorney for James V. Reuter Co., Inc., prior to dissolution.

NORMANN & ROUCHELL, and
CARLOS E. LAZARUS,
1605 Hibernia Bank Building,
New Orleans, La.,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 436.—October Term, 1943.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, Petitioner,

vs.

James V. Reuter, Inc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 10, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner brought this suit pursuant to § 17 of the Fair Labor Standards Act of June 25, 1938, 52 Stat. 1060, 29 U. S. C. §§ 201 *et seq.*, to restrain respondent, a Louisiana corporation, from violating the Act. The District Court found violations of §§ 6, 7, 15(a) (1) (2) and (5) of the Act and gave judgment permanently restraining respondent, "its agents, servants, employees and attorneys, and all persons acting or claiming to act in its behalf or interest" from further violations. On appeal the Circuit Court of Appeals for the Fifth Circuit reversed, 137 F. 2d. 315, and remanded the cause to the District Court for further proceedings. This Court granted certiorari, 320 U. S. 731.

The present proceeding is a motion to recall the writ of certiorari, submitted by the attorney who has appeared for respondent in this Court and in the two courts below. His motion is based upon the affidavit of James V. Reuter, described as the former president of the respondent corporation, from which it appears that on December 15, 1943, shortly after this Court had granted certiorari, Reuter and two others, being all the stockholders of respondent, duly signed a consent that the corporation be dissolved and that Reuter be designated its liquidator; and that one day later, on December 16, 1943, Reuter, as liquidator, certified that the corporation had been "completely wound up and is dissolved". Upon filing the consent and certificate with the Secretary of State, with proof of publication of the notice of dissolution, the Secretary

of State issued his certificate of December 31, 1943, certifying that the corporation "stands dissolved". See § 54 of Act 250 of the Louisiana Legislature of 1928 as amended by § 1 of Act 65 of 1932, and §§ 62 and 64 of Act 250 of the Louisiana Legislature of 1928. The purpose of the dissolution is stated to have been to secure tax advantages.

In support of the motion it is argued that since the corporation is, by Louisiana law, now dissolved without any prolongation of its life for the purpose of continuing pending litigation against it, see *McCoy* v. *State Line Oil & Gas Co.*, 180 La. 579, 583, the case has become moot; and further that, for want of a party respondent, this Court is without power to render any effective judgment in the appellate proceeding now pending before it.[1]

In the present posture of the case we think it plain that the moving papers fail to establish that the case is moot or has abated merely because of the dissolution of the corporate defendant. See *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290, 307-310; cf. *Southern Pacific Co.* v. *Interstate Commerce Comm'n*, 219 U. S. 433, 452; *Southern Pacific Terminal Co.* v. *Interstate Commerce Comm'n*, 219 U. S. 498, 514-516; *Leonard & Leonard* v. *Earle*, 279 U. S. 392, 398. The judgment rendered by the District Court determined, subject only to resort to the prescribed appellate review of the judgment, the right of the administrator to an injunction restraining the corporation and those associated or identified with it from violating the statute. Not only is such an injunction enforceable by contempt proceedings against the corporation, its agents and officers and those individuals associated with it in the conduct of its business, *Wilson* v. *United States*, 221 U. S. 361, 376-377; cf. *In re Lennon*, 166 U. S. 548, but it may also, in appropriate circumstances, be enforced against those

[1] In the *McCoy* case, it was held at 585-586 that it is the duty of a liquidator of a corporation in dissolution to "terminate in a legal manner . . . by prosecuting, defending, or compromising it, all litigation pending in which the corporation is a party". The court further stated that "the Legislature had no intention of sanctioning the issuance of a certificate of dissolution" where the liquidator had failed to discharge that duty, to the injury of opposing litigants. The Louisiana court deemed it appropriate in that case to annul the certificate of dissolution of the corporation there involved, in view of its liquidator's failure to terminate in a legal manner, prior to dissolution, the suit there under consideration.

We do not consider whether in this case this Court has a like power to annul the certificate of dissolution of respondent corporation, so as to permit the continuation of appellate proceedings here, for, as will appear, other disposition of the case seems more appropriate.

to whom the business may have been transferred, whether as a means of evading the judgment or for other reasons. The vitality of the judgment in such a case survives the dissolution of the corporate defendant. *Southport Petroleum Co.* v. *Labor Board*, 315 U. S. 100, 106-107. And see, to like effect, *Labor Board* v. *Hopwood Retinning Co.*, 104 F. 2d 302, 304-305; *Interstate Commerce Comm'n* v. *Western New York & P. R. Co.*, 82 Fed. 192, 194-195; *Morton* v. *Superior Court*, 65 Cal. 496; *Katenkamp* v. *Superior Court*, 16 Cal. 2d 696; *Mayor* v. *New York & S. I. Ferry Co.*, 64 N. Y. 622; *Farmers Fertilizer Co.* v. *Ruh*, 7 Ohio App. 430; *Sperry & Hutchinson Co.* v. *McKelvey Hughes Co.*, 64 Pa. Super. 57, 61-62; cf. *Alemite Mfg. Corp* v. *Staff*, 42 F. 2d 832, 833; *Labor Board* v. *Colten*, 105 F. 2d 179, 183; *Union Drawn Steel Co.* v. *Labor Board*, 109 F. 2d 587, 589, 594-595. And these principles may be applied in fuller measure in furtherance of the public interest, which here the petitioner represents, than if only private interests were involved. See *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 552, and cases cited.

Whether a family business, such as this one appears to be, has successfully avoided all responsibility for compliance with the judgment entered against the family corporation, by the simple expedient of dissolving it and continuing the business under the individual control of members of the family, as appears to have taken place here, is a question which it is unnecessary for us to decide on the basis of the scanty and not entirely enlightening affidavits now submitted to us. It is enough for present purposes, if the appellate procedure, rendered abortive by respondent's dissolution, has not deprived petitioner of the benefits of the judgment rendered in his favor by the District Court, that he is entitled to initiate proceedings to enforce the judgment against individuals who either disobey its command or participate in the evasion of its terms. In such proceedings the question as to how far the successor to the corporation is bound by the decree may be fully investigated by the District Court, with appropriate appellate review. The decisive question for us then is whether petitioner can be rightly deprived of the benefit of the District Court's judgment by respondent's invocation of the appellate procedure provided by the statute, followed by the frustration of that procedure by respondent's dissolution.

It is true that this Court cannot, in the present state of the record,[2] render an effective judgment on the merits, because the sole respondent brought before us by the petition for certiorari, by reason of its dissolution, no longer has capacity to be sued, and no one has sought to procure substitution of any other person as party respondent. Such is the effect of dissolution under the Louisiana law. See *McCoy* v. *State Line Oil & Gas Co., supra*; *Ortego* v. *Nehi Bottling Works,* 182 So. 365, 367 (La. App.); compare *Oklahoma Natural Gas Co.* v. *Oklahoma,* 273 U. S. 257. But the judgment of the District Court was entered against respondent before it was dissolved and while it was capable of being sued. Hence it was binding on respondent and, as we have seen, on others who, in appropriate circumstances, may be brought within its reach. The dissolution of respondent, so long as the certificate of dissolution is not annulled, precludes enforcement of the judgment against it, but does not foreclose petitioner from asserting his rights against such other persons as may be bound by the judgment. Hence it does not follow, because the pending appellate proceeding has abated, that the judgment of the District Court has abated because of respondent's dissolution. Nor does it follow, because of this Court's inability to proceed with the appeal on the merits for want of a proper party respondent, that petitioner is to be deprived of the benefit of his judgment in the District Court, which the statute contemplates shall be undisturbed save only by pursuit to completion of the prescribed appellate procedure.

It is a familiar practice of this Court that where for any reason the Court may not properly proceed with a case brought to it on appeal, or where for any reason it is without power to proceed with the appeal, it may nevertheless, in the exercise of its supervisory appellate power, make such disposition of the case as justice requires. When events subsequent to an appeal may affect the correctness of the judgment appealed from, this Court may vacate the judgment and remand the cause for further proceedings. *Missouri, ex rel. Wabash Ry. Co.* v. *Public Service Comm'n,* 273 U. S. 126, 131; *Patterson* v. *Alabama,* 294 U. S. 600, 607, and cases cited; *Villa* v. *Van Schaick,* 299 U. S. 152, 155-156. When it is without jurisdiction to decide an appeal which should have been prosecuted to another court, it may vacate the judgment

[2] Compare note 1, *supra.*

and remand the cause in order to enable the court below to enter a new judgment from which a proper appeal may be taken. *Gully* v. *Interstate Nat. Gas Co.*, 292 U. S. 16; *Oklahoma Gas Co.* v. *Oklahoma Packing Co.*, 292 U. S. 386, 392; *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171, 174; *Phillips* v. *United States*, 312 U. S. 246, 254. If a judgment has become moot, this Court may not consider its merits, but may make such disposition of the whole case as justice may require. *United States* v. *Hamburg-American Co.*, 239 U. S. 466, 477-478; *Heitmuller* v. *Stokes*, 256 U. S. 359, 362-363; *Brownlow* v. *Schwartz*, 261 U. S. 216, 218.

Here, for the reasons we have stated, it appears that petitioner is entitled to retain the benefit of the judgment entered in his favor by the District Court, subject only to the review of that judgment on appeal as the statute prescribes, and that that judgment is not shown to be moot or to have abated. But review of a judgment of the District Court contemplates more than a consideration of the case by the Circuit Court of Appeals alone. The losing party in that court may secure further review here upon certiorari, if he so desires and if this Court, in its discretion, grants the writ. Thus appellate review of the judgment of the District Court had not been completed when respondent was dissolved, and the full review contemplated by the statute was frustrated by that dissolution. By reason of that action, the judgment of the Circuit Court of Appeals, which is not final because the case is pending in this Court, cannot rightly be made the implement for depriving petitioner of the benefit of his judgment in the District Court. We conclude, therefore, that in the circumstances the only just and appropriate disposition which can be made of this case is that the judgment of the Court of Appeals be vacated, and the judgment of the District Court restored, as though respondent had taken no appeal.

The judgment of the Court of Appeals is vacated, and the cause will be remanded to the District Court, where petitioner will be free to take such proceedings for the enforcement of the judgment of the District Court, as he may deem advisable, and as may be proper in the circumstances of the case. Any order of the District Court will, of course, be subject to appropriate appellate review.

So ordered.